

Applicant : Thomas G. Woolston
Serial No. : 09/779,551
Filed : February 9, 2001
Page : 6 of 8

Attorney's Docket No.: 13466-002013

REMARKS

Claims 11-50 have been cancelled without prejudice or disclaimer and to expedient allowance of this unique and important subject matter. Claims 51-53 are newly presented for consideration and find support in the application as filed at least at the same locations as canceled claims 11-50. No new matter has been added.

Independent claim 51 recites an electronic marketplace system for receiving electronic presentment of an item for sale from a participant seller. The electronic marketplace includes a database, a computer, and an integrated transaction processor, the latter of which is for processing payment from an open audience of internet participants. In addition, the transaction processor facilitates a sales termination event for the selling instance of the item at the electronic marketplace. The termination event locks the data record for the item selling instance to prevent the item from being sold twice and the termination event creates at least two classes of potential purchasers (e.g., a first class and a second class) from the open audience of internet participants. The first class has access to purchase the item by access to a participant account maintained by the electronic marketplace for a first tier price for the item for the item selling instance, and the second class has access to purchase the item by access to a participant account maintained by the electronic marketplace for a second tier price for the item that is treated differently than the first tier price for the item for the item selling instance. In addition, the electronic marketplace is configured such that the participant seller of the item is without recourse to rescind the sale of the item after the transaction processor has locked the data record for the item to initiate the sale for the item by processing the selling instance for the item at the electronic marketplace.

The art of record – including Nahan or "Herald" or any hypothetical combination thereof – fails to disclose or suggest an electronic marketplace system having the features recited in claim 51.

Indeed, electronic marketplace system recited in claim 51 represents a profound departure from the prior art systems. In each of the prior art systems relied on in rejecting the claims, it is fundamentally the seller, as a person, who is accepting and agreeing to go forward with the transaction. For example, Nahan at best is a multi-media art advertising system that requires a seller personally to accept the offer to buy a painting. In contrast, claim 51 recites an electronic

Applicant : Thomas G. Woolston
Serial No. : 09/779,551
Filed : February 9, 2001
Page : 7 of 8

Attorney's Docket No.: 13466-002013

marketplace system wherein a selling instance is created by the selling participant – in other words, it is the electronic marketplace system that is in effect selling the item by processing the payment for the item with the information contained in the selling instance. Thus, neither Nahan nor any of the other art of record, whether taken alone or in combination, discloses a termination sales event that processes payment and locks the data record by the electronic marketplace.

In addition, claim 51 goes a step further by claiming a novel and fundamentally different concept in the context of its own novel and non-obvious two tiered pricing schema. More particularly, claim 51 recites a transaction processor that, among other functions, facilitates a sales termination event that creates at least two classes of potential purchasers (e.g., a first class and a second class) from the open audience of internet participants. The first class has access to purchase the item by access to a participant account maintained by the electronic marketplace for a first tier price for the item for the item selling instance, and the second class has access to purchase the item by access to a participant account maintained by the electronic marketplace for a second tier price for the item that is treated differently than the first tier price for the item for the item selling instance. Neither Nahan nor the other art of record discloses or suggests the use or presence of such a transaction processor.

In this regard, the examiner's reliance on the portion of Nahan (col. 15, lines 44-49) quoted at page 12 of the office action is misplaced. This language from Nahan discloses merely that "the system provides the listing dealer with the ability to override reservations and sales to other dealers." Notably, nothing in Nahan discloses or suggests a transaction processor that, upon a sales termination event, facilitates at least two classes of potential purchases who are treated as being in different price tiers. Consequently, claim 51 is allowable over the art of record at least for this additional, independent reason.

Moreover, claim 51 recites that the electronic marketplace system is configured such that the participant seller of the item is without recourse to rescind the sale of the item after the transaction processor has locked the data record for the item to initiate the sale for the item by processing the selling instance for the item at the electronic marketplace. In contrast, the above quoted section of Nahan (which notes that listing dealers are able to "override" sales to other dealers) expressly teaches away from such a feature. This feature provides yet another independent reason why claim 51 is allowable.

Applicant : Thomas G. Woolston
Serial No. : 09/779,551
Filed : February 9, 2001
Page : 8 of 8

Attorney's Docket No.: 13466-002013

Independent claim 52 recites an electronic marketplace system having several of the same or similar features as recited in claim 51. Accordingly, claim 52 is allowable at least for the same reasons that claim 51 is allowable.

Claim 53 depends directly from independent claim 52, discussed above. Accordingly, dependent claim 53 is allowable for the reasons that independent claim 52 is allowable and for reciting allowable subject matter in its own right. Independent consideration and allowance of the dependent claims are requested.

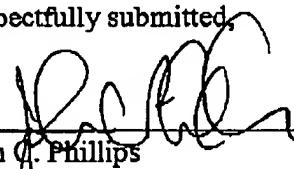
It is believed that all of the pending claims and rejections have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

In view of the foregoing amendments and the following remarks, reconsideration and allowance are respectfully requested.

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: 8/17/04


John G. Phillips
Reg. No. 35,322

PTO Customer No. 20985
Fish & Richardson P.C.
12390 El Camino Real
San Diego, California 92130
Telephone: (858) 678-5070
Facsimile: (858) 678-5099
10371598.doc